IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 812 of 1998

with

SPECIAL CIVIL APPLICATION No 4859 of 1991
WITH
SPECIAL CIVIL APPLICATIONS NOS.2214/1997,
2161/2000, 1773/2001, 11439/2001,
7537/1998, 2990/1999
AND
SPECIAL CIVIL APPLICATION NO. 12090/2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA DY.ACCOUNTANT GENERAL
Versus
RAJKOT MUNICIPAL CORPORATION

Appearance:
1. Special Civil Applications Nos. 812/1998, 2161/2000,

1773/2001, 1773/2001, 11439/2001 & 12090/2000

MS. P.J. DAVAWALA for Petitioner
MR. A.K. CLERK for Respondents

2. Special Civil Application No. 4859 of 1991
MR. BIPIN I MEHTA for Petitioners
MR. P.M. THAKKAR for Respondent No. 1 - 2
MR M.G.NAGARKAR for Respondent No.3

3. Special Civil Application No. 2114 of 1997

MS. P.J.DAVAWALA for Petitioner
MR. A.J. PANDYA for Respondent No.1
TANNA ASSOCIATES for Respondent No.2

4. Special Civil Application No.7537 of 1998

MR. A.H. MEHTA for the Petitioner
MR. J.R.NANAVATI for Respondent No.2

5. Special Civil Application No. 2990 of 1999

MS. VASAVDATTA BHATT WITH MR. A.H.MEHTA for
the petitioner
MR. A.K.CLERK for the Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. In this group of matters which are filed by the Union of India, the demand notices and bills for recovery of service charges in lieu of taxes issued by the Municipal Corporations have been challenged. The question raised before us by the petitioner - Union of India is whether in view of the immunity from taxes granted under the provisions of Article 285(1) of the Constitution of India, these Corporations can issue such bills and demand notices or take coercive measures against the property of the Union of India for recovery of property taxes or service charges in lieu of such taxes.

2. The aforesaid question is raised, because, in

eight of these matters, Rajkot Municipal Corporation had issued such demands for recovery of such service charges in respect of properties of the Union of India housing the offices of the Accountant General, Rajkot, Post Offices and the Railway, and, in the remaining matter, the Jamnagar Municipal Corporation had raised similar demand for the Railway property.

3. Special Civil Applications Nos. 812 of 1998, 12090 of 2000 and 11439 of 2001 have been filed by the Union of India through the Deputy Accountant General, Rajkot. In Special Civil Application No. 812 of 1998, the petitioner has challenged the bill dated 20th October 1997, at Annexure "A" to that petition, issued by the tax Officer of the Municipal Corporation for a total sum of Rs.14,66,640=00 in respect of the property occupied by the office of the Accountant General, at Rajkot. The petitioner also challenges the order dated 29-1-1998, at Annexure "C" to the petition, restraining the petitioner from dealing with the property since attachment warrant was issued in respect thereof for recovery of the aforesaid dues. The order was made under Rule 45(1) of Chapter 8 of the Schedule to the Bombay Provincial Municipal Corporation Act, 1949. The impugned bill at Annexure "A" recited that it was issued in respect of the property tax and water tax under Rules 39 and 40 of the Schedule of Chapter 8 of the said Act. It appears from the statement attached to that bill that it was prepared on the basis of the property tax dues calculated from 1955-1956 upto 1997-1998 with general tax on property and conservancy tax as the components. Special Civil Application No. 12090 of 2000 also relates to the same property of the Accountant General's office, Rajkot. The bill impugned therein at Annexure "A" to the petition (Bill No. 125101) was for the year 2000 - 2001 and it was for a total sum of Rs.11,90,152=00 inclusive of the arrears mentioned therein for service charges. Special Civil Application No. 11439 of 2001 is filed by the petitioner in respect of the property occupied by the office of the Accountant General, Rajkot and bill at Annexure "A" for the year 2001 - 2002 demanding a total amount of Rs.13,14,656=00 inclusive of the previous dues by way of service charges, is challenged in that petition.

3.1 Special Civil Application No. 2990 of 1999 has been filed by the Union of India in respect of the property of the Western Railway rendered for which the Rajkot Municipal Corporation issued a demand notice at Annexure "A" to the petition demanding a sum of Rs.16,26,49,575=00 as service charges from the Divisional

Manager, Western Railway, Rajkot in respect of the property mentioned therein for which bill No. 18/5682 was received by the petitioners office on 18-2-1999, and the said amount included arrears from 1-4-1954.

3.2 Special Civil Applications Nos. 2161 of 2000 and 1773 of 2001 have been preferred by the Union of India in respect of the property occupied by the Post Master General, Rajkot, challenging the demand notices, issued by the Rajkot Municipal Corporation for the property in question, for a sum of Rs.23,84,060=00 and the order attaching the property and instructing the Senior Post Master not to deal with the property so attached. The demand notice and the order restraining the petitioner from dealing with the property challenged in Special Civil Application No. 2161 of 2000 are at Annexure "A" and "B' to the petition, and similar orders for the subsequent years which included the arrears, for the recovery of the dues of the Corporation, are challenged in Special Civil Application No. 1773 of 2001 at Annexure "A" and "B" thereto.

3.3 Special Civil Application No. 4859 of 1991 is also filed by the Union of India in respect of the property occupied by the office of the Post Master General, at Rajkot challenging the order dated 17-7-1991 at Annexure "A" to that petition, intimating the petitioner that his property was attached and if the amount was not paid in five days, it would be sold. The demand notices dated 28th June 1991 have also been challenged in that petition, which are at Annexure "G" collectively. All these notices were issued by the Rajkot Municipal Corporation.

3.4 Special Civil Application No. 2114 of 1997 has been preferred against the Rajkot Municipal Corporation again in respect of the property occupied by the office of the Post Master General challenging the demand notices dated 11th September 1996, at Annexure "A" to the petition and the order dated 23rd February 1997, at Annexure "B" to the petition, and the order dated 23rd February 1997 at Annexure "B" to the petition, for recovery of Rs.21,97,996=00 from the petitioner towards service charges in respect of the property in question.

4. Special Civil Application NO. 7537 of 1998 has been filed by the Union of India in respect of the property occupied by the Railways at Jamnagar challenging the demand notice issued by the respondent - Jamnagar Municipal Corporation and received by the petitioner's office on 24-6-1998, at Annexure "A" and "B" to the

petition, demanding a total amount of Rs.8,61,87,780=00 by way of service charges in lieu of the property taxes in respect of the property in question. The demand notice at Annexure "A" to that petition, dated 24-6-1998, referred to general tax and conservancy tax, as also education cess and the petitioner was warned that if the amount of Rs.99,043=00, which included penalty for the tax due till 31st March 1998, was not paid, attachment warrant will be issued. The notice at Annexure "B" to the petition dated 24-6-1998 was for the years 1992-93 to 1997-98 demanding the aforesaid amount of Rs.8,61,87,780=00 in respect of the properties mentioned therein. In the communication at Annexure "C" dated 28th April 1998, the respondent - Municipal Corporation, Jamnagar required the Divisional Railway Manager, Rajkot to pay up the said amount of service charges in lieu of the property tax within 15 days.

5. The case of the Union of India in all these matters is that the respondents - Municipal Corporations cannot recover any tax including property tax or service charges in lieu of the property tax, as is sought to be done by them in respect of these properties, in view of the exemption granted by Article 285(1) of the Constitution of India. According to the petitioner, it was not challenging the bills as such, but was challenging the authority of the respondent - Corporations to issue such demand notices and coercive orders for recovery of taxes on the property belonging to the Union of India or service charges in lieu of such taxes under the provisions of the Bombay Provincial Municipal Corporation Act. According to the petitioner, by using the nomenclature "service charges", the nature of coercive recovery which was tax in respect of the property did not change. It was submitted that so far as the property occupied by the railway is concerned, there was no notification issued under section 184(1) of the Railways Act, 1989, which corresponded to section 135(1) of the Act of 1890. According to the petitioner, there was also no contract as contemplated by sub-section (4) of section 184 of the Railways Act, 1989. Therefore, even in respect of the property occupied by the Railway, the respondent - Corporations could not have effected any recovery by way of service charges in view of the provisions of Article 285(1) of the Constitution of India.

5.1 Reliance was placed on behalf of the petitioner on the decision of Hon'ble the Supreme Court in case of Union of India v. Purna Municipal Council, reported in AIR 1992 SC 1597, in which, the Supreme Court in respect

of similar demand notices issued by Municipal Council, Purna claiming service charges in lieu of tax for the period from 1954 to 1960, held that the view expressed by the High Court that the properties continued to be liable to taxes under Article 285(2) was erroneous. Allowing the appeal, the Supreme Court issued a direction in favour of the Union of India restraining the respondent Municipal Council from raising demands on the Railway in regard to service charges.

5.2 Reliance was also placed on the decision of the Supreme Court in Union of India v. Ranchi Municipal Corporation, reported in (1996) 7 SCC 542 in which the Supreme Court, considering the question of validity of demand by Ranchi Municipal Corporation of service charges and following the Purna Municipal Council case, held that section 135 of the Railways Act, 1890, was subject to the provision of Article 285 of the Constitution. Therefore, the respondent municipality was restrained from demanding any payment by way of service charges from the Railway. It was held that the municipality had no right to demand service charges from the Union of India, and such demand made by the municipality was clearly ultra vires its power. When the Supreme Court was pointed out that, in earlier Writ Petition No. 2844 of 1992, the Patna High Court had held that the demand on account of service charges was not demand of tax on the property of the Railway and that it was liable to pay the service charges, against which leave was refused and the Special Leave Petition was dismissed on the ground of gross delay, the Supreme Court held that it was settled law that such summary dismissal of Special Leave Petition did not constitute res judicata for deciding the controversy. It would thus be clear that notwithstanding the earlier summary dismissal of the Special Leave Petition filed against the judgement and order of the Patna High Court in Writ Petition No. 2844 of 1992, the Supreme Court holding that the controversy was no longer res integra, in terms, held that the municipality had no right to demand service charges from the Union of India and that such a demand was ultra vires its power.

5.3 Reliance was also placed on the decision of the Supreme Court in Union of India v. The City Municipal Council, reported in AIR 1978 SC 1803 for the proposition that the property of the Union was exempt from all taxes imposed by State or by any authority within the State under Clause (1) of Article 285 unless the claim can be supported and sustained within the four corners of clause (2) of Article 285.

6. The respondent - Corporations have taken up a stand that service charges were payable by the petitioner. In the affidavit-in-reply of the Jamnagar Municipal Corporation filed in Special Civil Application No. 7537 of 1998, it is contended in paragraph 1.2 that service charges were payable and the impugned action could be taken under the provisions of the Bombay Provincial Municipal Corporation Act. In paragraph 2 of the affidavit-in-reply, it is in terms contended that the properties of the petitioner which are within the municipal limits were liable to municipal taxation in accordance with law. It is stated that the respondent corporation provides all facilities to the petitioner as are being provided to the other residents of the Corporation and therefore, the petitioner was liable to pay municipal taxes including service charges to the respondent corporation. According to the respondent corporation, it was entitled to recover service charges in lieu of the property taxes in respect of the railway properties as per the notification of the Government of India, dated 29th March 1967. It is stated that, under the development plan, 30 meters wide road is passing through the petitioner's land and the respondent corporation had provided that public road in public interest.

6.1 In the affidavit-in-reply filed by the Rajkot Municipal Corporation in Special Civil Application No. 812 of 1998, it has been stated in paragraph 4 that the petitioner was explained the calculation of the rateable value and the calculation of the service charges over and over again and that the calculation of rateable value was based upon the information about the property supplied to the Corporation by the petitioner. According to the respondent corporation, the action was in consonance with the circulars issued by the Ministry of Finance and that the other properties of the Union of India occupied by Air India Radio, Doordarshan Kendra, Telecommunications etc. were subjected to service charges by the Corporation. It is stated that, ascertaining the amount of service charges and levying and recovering the same is an administrative process for which the respondent Corporation and its authorities are fully empowered under the provisions of the Act. The service charges were calculated at the rate of 75% of the general tax (house tax) and conservancy tax payable by private individuals.

7. The learned Senior Counsel and other counsel appearing for the respondent - Corporations contended that the demands raised by the Corporations were in consonance with the circular letters of the Central Government issued in 1954 and 1967 which allowed the

Corporations to collect service charges in respect of the properties of the Union of India. It was submitted that the Central Government had agreed to pay, by way of contribution to the local bodies such service charges and it was now estopped from resiling from its commitment. It was submitted that the question of applicability of Article 285 did not arise, because, the Central Government itself had in its declaration stated that service charges would be paid notwithstanding the provisions of Article 285. The character of such liability arising because of such declaration on the part of the Central Government was different and it entitled the Corporations to raise demands for service charges and recover the same in accordance with the provisions of the Act. It was also contended that so far as the railway properties are concerned, the circular letters issued by the Central Government in 1954 and 1967 constituted a contract which enabled the municipal corporations to recover service charges as contemplated by those circular letters. It was finally contended that the service charges were recoverable by way of compensation by the municipal corporations from the petitioner on the basis of there being a quasi-contract and therefore, the respondents corporations were justified in issuing the demand notices and attempting coercive recoveries of their dues.

7.1 In support of their contentions, the learned counsel relied upon the following decisions :

[a] The decisions of the Supreme Court in Food Corporation of India v. The Sub-Collector, Narsapur, reported in AIR 1999 SC 2521 and in Food Corporation of India v. Municipal Committee, Jalalabad, reported in AIR 1999 SC 2573 were cited to point out that the Supreme Court held that the Food Corporation of India cannot claim exemption from taxation under section 285 of the Constitution, because, it was a distinct entity from the Central Government.

[b] The decision of the Supreme Court in Board of Trustees for the Visakhapatanam Port Trust v. State of Andhra Pradesh, reported in AIR 1999 SC 2552 was cited to point out that the Supreme court, in the context of the property of the Board of Trustees of Visakhapatanam Port Trust, held that the Board was not exempt from taxation under Article 285 on the ground that the property was that of the Union of India. It was held that the Board was distinct from the Union Government

and it could not claim exemption from taxation under Article 285 of the Constitution.

8. Chapter XI of the Bombay Provincial Municipal Corporation Act, 1949 relates to municipal taxation. Property taxes are referred to in section 127(1)(a) which the Corporation is empowered to impose. The property taxes comprise water tax, conservancy tax, general tax and betterment charges as provided by section 129 of the said Act and these can be levied on buildings and lands in the City subject to the exceptions, limitations and conditions provided in the Act. Section 130 provides for levy of water tax in respect of premises referred to therein, while section 131 provides that conservancy tax shall be levied on the premises indicated therein. General tax is leviable under section 132 in respect of all buildings and lands, as stated therein. Under section 132(1), the general tax is not payable on buildings enumerated thereunder, which include buildings and lands vesting in the Government used solely for public purposes. So far as the State Government is concerned, section 133(1) provides for payment to be made to the Corporation in lieu of general tax by the State Government, for which the buildings and lands vesting in it are exempt by clause (c) of sub-section (1) of section 132. There is no similar provision for the Central Government. Under section 135, if, in respect of premises used solely for public purposes and not used or intended to be used for purposes of profit or for residential, charitable or religious purposes, water tax would be leviable under this Act from the Government, the Commissioner, in lieu of levy such tax, shall charge for the water supplied to such premises, by measurement, at such rate, as shall be prescribed by the Standing Committee.

8.1 Chapter VIII of the Schedule to the said Act, which contains Taxation Rules, provides for collection of taxes, and Rules 40, 41 and 42 lay down the procedure for recovery of taxes by issuance of bill, the notice of demand and distress or attachment. The impugned demand notice and orders clearly show that the Corporations have exercised their powers of coercive recovery of taxes under the said Act and the Rules.

9. Article 285 of the Constitution which is invoked by the Union of India in all these petitions, reads as follows :

"285. Exemption of property of the Union from State taxation :-

(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provide, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

9.1 It will be noticed that, under Article 285(1), there is an exemption in respect of the property of the Union from all taxes imposed by a State or by any authority within a State. The Municipal Corporation would be an authority within a State and therefore, even a Municipal Corporation cannot impose taxes on the property of the Union which may be within its limits unless law made by the Parliament otherwise provides. The words "save in so far as Parliament may by law otherwise provide" clearly rule out any method short of enacting such law by the Parliament for taking away the exemption conferred by Article 285(1) from all taxes imposed by a State or by such authority within the State. So far as the premises occupied by the Postal Department and the Accountant General are concerned, it is not even urged that there is any law made by the Parliament taking away the exemption, from taxes by the State or any authority within the State, which has been granted in respect of the properties of the Union.

9.2 On the basis of the provisions of section 135(1) of the Railways Act 1890, it was sought to be contended that the readiness of the Central Government in the communications dated 10th May 1054 and 29th March 1967 to pay service charges equivalent to 75% of the property tax realised from private individuals, where the services are availed of by the Central Government, should constitute sufficient authorization to the respondents corporations to raise such demands and effect the recovery of service charges in lieu of taxes. Admittedly, there has been no notification issued under section 135(1) of the Railways Act 1890 or under section 184(1) of the Railways Act, 1989, declaring the railway administration to be liable to pay the taxes. Nothing short of such notification can

create such liability, because, the extent of liability will be determined by the provisions made by the Parliament, as contemplated by Article 285(1), and when the provision of law made by Parliament i.e. section 184(1) of the Railways Act 1989, lays down that it is only by way of notification in official gazette that the railway administration can be declared to be liable to pay the taxes, the exemption could be taken away only when such notification is issued and published in the official gazette and not otherwise. Section 184(1) of the Act of 1989 refers to such notification, which has been defined by section 2(26) so as to mean a notification published in the official gazette. Admittedly, no such notification has been published in any official gazette in respect of the properties of the railways declaring the railway administration to be liable to pay any specified tax. Therefore, the railway administration cannot be made liable to pay any tax in aid of the funds of any local authority as laid down by the first part of section 184(1) of the Railways Act, 1989, as also on the basis of the provisions of Article 285(1) of the Constitution.

9.2 In The Union of India v. Bhusawal Municipal Council, reported in AIR 1982 BOM. 512, a Division Bench of the Bombay High Court, construing the provision of section 135 of the Railways Act 1890, held that, under that section, unless the Railway Administration is expressly declared as being liable to pay a tax, that tax cannot be levied on the Railway Administration. Such declaration has to be by a notification issued by the Central Government.

9.3 In The Municipal Corporation of Greater Bombay v. Akbar S. Sarela, reported in AIR 1990 BOM. 141 (decided on 13th February 1959), a Division Bench of the Bombay High Court, in context of the provisions of section 135 of the Railways Act 1890, held that, in order to attract the provisions of sub-section (2) of section 135, not only must there be a notification of the Central Government under sub-section (1) of section 135, but there must be a liability upon the Railway Administration to pay a tax by virtue of the notification. It is only when the Railway Administration is made prima facie liable to pay a tax to a local authority that it can approach the appropriate authority for determining the quantum of such liability.

9.4 In Union of India v. Commr. of Sahibganj Municipality, reported in AIR 1973 SC 1185, the Supreme Court held that since there was no law providing for

taxation of Railway property and since the 32 blocks of buildings were not in existence before April 1, 1937 (when Part III of the Government of India Act came into force) or before commencement of the Constitution, the buildings were not liable to pay any tax, by virtue of Article 285. The 32 blocks of buildings vested in the Union, some of them after April 1, 1937, and some after the Constitution came into existence. It was held that these properties could be made liable to pay tax to the Municipality only if Parliament by law provided to that effect.

9.5 In Union of India v. City Municipal Council, reported in AIR 1978 SC 1803, it was held that the exemption from all taxes given to the property of the Union under clause (1) of Article 285 was subject to the exception in clause (2) of Article 285 where such property was exigible to tax immediately before the commencement of the Constitution. The advantage of this exception can be claimed only if (1) it is "that tax" which continues to be levied and no other, and (2) the local authority in "that State" claims to continue the levy of the tax. In other words, the nature and the type of tax and the property on which the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be of the same State to which it belonged before the commencement of the Constitution. But in both these cases, under clause (1) and clause (2), Parliament may make a law withdrawing the exemption from imposition or the exception giving the right to impose.

9.6 The word "Taxation" as defined in Article 366(28) of the Constitution includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly". Though it is not an exhaustive definition and only shows what is included in the word one is struck immediately by the width of its language. Though it speaks of any tax or impost, it goes a step further and adds "whether general, or local or special", indicating thereby that no special or local considerations are relevant and even a general non-discriminatory levy must be regarded as taxation. (See In re SEA CUSTOMS ACT, reported in AIR 1963 SC 1760). "Tax" would include also "rates" and other "charges" levied by local authorities under statutory powers. (See D.G.Gouse & Co. (Agents) Pvt. Ltd. v. State of Kerala, reported in AIR 1980 SC 271). Thus, unless the Parliament makes law as contemplated by Article 285, exemption from taxes which include service charges in lieu of taxes granted under that provision,

cannot be taken away.

10. The argument that the provision of sub-section (4) of section 184 of the Railways Act, 1989 should be invoked for holding that the Corporations were enabled by the aforesaid communications of 1954 and 1967 to recover service charges has no basis, for the simple reason that, admittedly, there has not been entered into any contract with the local authorities as contemplated by section 184(4) of the Railways Act 1989, and there cannot be any implied contract spelt out from the unilateral communications from the Central Government showing readiness to pay by way of compensation for specified services which are specifically rendered to the premises of the Union Government. Under sub-section (4) of section 184, it is provided that, nothing in this section shall be construed to prevent any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render to the railway administration. Obviously, this provision speaks of contract in respect of particular service specially provided to the railway administration and has no application to the general taxes leviable under the Bombay Municipal Corporation Act. None of the impugned demand notices or recovery orders intimating attachment of the properties of the Union Government are referable to any contract and these have obviously been issued by the Municipal corporation under the purported exercise of powers to recover service charges in lieu of property taxes. When the taxes themselves could not be levied except by removing the exemption by law made by the Parliament as contemplated by section 285(1), the embargo cannot be taken away by any implication arising from such administrative communications. Even if the respondents were entitled to recover any compensation on the basis of any alleged assurances of the Central Government, the nature of their demand would have been entirely different and not as has been made in all these matters by way of recovery notices for tax dues and coercive action for recovery of such dues. The attempt to base the contention now on quasi-contract theory and entitlement for compensation for services rendered, cannot cloud the nature of the demand notices and the orders of recovery which are issued under the provisions of the said Act and the Rules having bearing on the aspect of levy and recovery of municipal taxes. No exemption can be spelt out from the communications of 1954 and 197 which can make any inroad in Article 285(1) of the Constitution.

11. We may recall here that, in the Civil Writ Jurisdiction Case No. 2844 of 1992 decided by the Patna High Court which has been referred to in the decision of the Supreme Court in Union of India case (supra), the High Court had, in terms, relied upon these very circular letters dated 10th May 1954 and 29th March 1967 and had on the basis of these communications, upheld the demand for recovery of service charges made by the Municipal Corporation of Ranchi. Same question again arose before the Supreme Court in Union of India v/s Ranchi Municipal Corporation (supra) from the decision of the of a Division Bench of the High Court rendered on 15-5-1999 in Writ Jurisdiction Case No. 3323 of 1994 when the municipality raised similar demand for service charges from the Union of India. It was tried to be contended before the Supreme Court that the Special Leave Petition against the earlier judgement and order in Civil Writ Jurisdiction Case No. 2844 of 1992 dated 6th April 1996 was rejected. The Supreme court, holding that such summary dismissal did not constitute res judicata, held that the Municipal Corporation had no power to recover such service charges from the Union of India. Therefore, the decision in Ranchi Municipal Corporation as well as in Purna Municipal Council are directly applicable to the present case and cannot be distinguished on any ground, as was attempted to be done on behalf of the petitioners by their learned counsel.

12. It is thus clear to us that, in absence of any notification under section 184(1) of the Railways Act, 1989 or under the corresponding provision of section 135(1) of the Act of 1890, and in absence of any contract as contemplated under sub-section (4) of section 189 or under sub-section (4) of the corresponding provision of section 135 of the Act of 1890, it was not open to any of these Corporations to impose any tax or service charges in lieu of tax under the said Act and effect recovery by issuing the impugned demand notices and other coercive orders. Admittedly, there is no law enacted by the Parliament, withdrawing the exemption from municipal taxes, as contemplated by Article 285(1) in respect of the properties occupied by the Postal Department or Office of the Accountant General. Obviously, therefore, the recovery of property taxes or service charges in lieu of such taxes as is sought to be done under the impugned demand notices and orders issued for the coercive recovery of the municipal taxes under the said Act, is ultra vires the powers of the Municipal Corporations. All the impugned notices, demand notices as well as other orders issued by these Municipal Corporations for effecting recovery of service charges in lieu of taxes

are, therefore, hereby set aside. Rule is made absolute in each of these petitions accordingly, with no order as to costs. If any amount is deposited pursuant to the interim orders, that may be refunded to the Union of India.

[R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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